



Neutral Citation Number: [2022] EWCA Civ 604

Case No: CA-2021-000218

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
Eason Rajah QC (sitting as a Deputy High Court Judge)
[2021] EWHC 2644 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 May 2022

Before :

LORD JUSTICE STUART-SMITH
LORD JUSTICE NUGEE
and
LORD JUSTICE WARBY

Between :

(1) ANWAR GANGAT
(2) SURENDRA BHAWAN

**Claimants/
Respondents**

- and -

YUSUF JASSAT

**Defendant/
Appellant**

David Peters (instructed by **Edwin Coe LLP**) for the **Appellant**
Arfan Khan (instructed by **Pandya Arbitration Global**) for the **Respondents**

Hearing date: 22 March 2022

Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.30am on 6 May 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Nugee:

Introduction

1. This is an appeal by the Defendant, Mr Yusuf Jassat, against the decision of Mr Eason Rajah QC, sitting as a Deputy High Court Judge, (“**the Judge**”) given after a trial on liability alone, in which he held that Mr Jassat was liable to account to the Claimants, Mr Anwar Gangat and Mr Surendra Bhawan, for the reasons given in his judgment of 1 October 2021 at [2021] EWHC 2644 (Ch) (“**the Judgment**” or “**Jmt**”).
2. Mr Jassat appealed with permission of Arnold LJ on three grounds, but after hearing from Mr David Peters on his behalf we decided that the appeal should be dismissed. In this judgment I give my reasons for agreeing to the dismissal of the appeal.

Facts

3. I can take the facts with gratitude from the Judge’s careful findings, set out with commendable clarity in the Judgment at [27]-[114]. They can be summarised as follows.
4. Mr Gangat and Mr Bhawan are businessmen resident in South Africa. In the early to mid-1980s they became minority shareholders in various companies in the Jumbo Group in South Africa, which carried on a cash and carry business. This was a legitimate business: its profits were declared to the South African Revenue Service (“**SARS**”), and tax was paid on them. The other major shareholders were two more businessmen, Mr Edrees Hathurani and Mr Dinesh Seetha, and in general the shares were held as to 40% for each of Mr Hathurani and Mr Seetha, and 10% for each of Mr Gangat and Mr Bhawan, although there were other shareholders in some of the companies. I will refer, as the Judge did, to Messrs Hathurani, Seetha, Gangat and Bhawan together as “**the South African businessmen**” or simply “**the businessmen**”.
5. The cash and carry business was sold in about 1998. That led ultimately to a lengthy inquiry by SARS, opened in or about 2006, into the sale and its proceeds. In the course of that inquiry Mr Hathurani disclosed to SARS, as part of a settlement with them, that for a decade or so an “off-book” cash business had been run alongside the Jumbo Group’s legitimate business. This was not run legitimately: its profits were not declared to SARS and no tax had been paid on them. The other three South African businessmen also settled with SARS, making similar disclosures by affidavit.
6. These disclosures also revealed that the majority of the profits of the cash business had been secretly expatriated from South Africa in breach of exchange controls and placed in Swiss bank accounts. Substantial sums were involved: the Judge referred to evidence that the cash business made profits between 1987 and 1997 of about R209m of which some R207m had been expatriated, and found that after deduction of commission paid to middlemen some R200m ended up in the Swiss bank accounts: Jmt at [41]. We were not told the sterling or dollar equivalent, and during this period it appears that the Rand steadily declined in value against both, but some calculations by Mr Peters in his opening submissions for trial suggest that average rates over the period (assuming payments at an even rate) were about R5.2 to the £ and R3.2 to the \$1, which on this basis would make the total transferred to the Swiss bank accounts

the equivalent of some £40m or \$65m. That is consistent with evidence that by the late 1980s or early 1990s some \$20m had accumulated in the accounts.

7. Mr Hathurani was the dominant figure amongst the businessmen and it was he who arranged for the expatriation to Swiss bank accounts. He had known Mr Jassat, a British national resident in London, since the 1970s, and Mr Hathurani arranged for accounts to be opened under Mr Jassat's control. Over the years many accounts were opened and closed at a number of banks. Mr Jassat had signing authority over them and eventually became the account holder of some of them.
8. It is not necessary to give the details of the accounts, but there was always a main account of Mr Hathurani's to receive the expatriated funds before division. It was agreed between the businessmen that the funds would be divided 40% to each of Mr Hathurani and Mr Seetha and 10% to each of Mr Gangat and Mr Bhawan. At some point in the late 1980s or early 1990s Mr Seetha and Mr Gangat came to London and met Mr Jassat (Mr Bhawan being content to let Mr Gangat look after his interests). The evidence was that by then about \$20m had accumulated and it was time for the funds to be divided. They travelled to Geneva with Mr Jassat and new accounts were opened to receive the individual shares. One new account, called Camelot, was opened in the name of Mr Gangat to hold his and Mr Bhawan's share, and there was evidence that this then amounted to \$4m (ie 20% of the total). Mr Jassat had a power of attorney over this account. From that point there were always accounts for the individual shares, controlled by Mr Jassat, although the accounts changed over time.
9. Thereafter funds would be expatriated and distributed in the agreed proportions. Mr Gangat and Mr Bhawan claimed however that a final \$12m was not distributed because it was misappropriated by Mr Jassat. Their evidence was that over time Mr Jassat acquired a position of complete control over the Swiss bank accounts and only he knew what accounts existed and whose money they held. The Judge accepted that evidence. Mr Jassat accepted that he had never provided Mr Gangat and Mr Bhawan with an account of his dealings either with their individual accounts (Camelot and its successors) or with the main account.
10. Mr Jassat used funds from the Swiss bank accounts to invest in UK property, using Jersey companies, held by nominees for the relevant South African businessmen, to do so. Some idea of the scale of this can be obtained from a report by Grant Thornton in October 2012 ("**the Grant Thornton report**"). HMRC had opened an investigation in November 2011 into Mr Jassat's affairs, and the report was produced by Grant Thornton on behalf of Mr Jassat to aid him in making a disclosure to HMRC. It identified 53 commercial and residential properties acquired between 1988 and 2005 by or on behalf of Mr Jassat, almost all of which had been acquired primarily for the South African businessmen, and 16 companies which had been set up for this purpose, three of which were for the benefit of Mr Gangat (and hence Mr Bhawan) and one for the benefit of all of them. Mr Jassat accepted that he had not provided any account to Mr Gangat and Mr Bhawan of his dealings with any of the companies which were created for them and which were managed and controlled on his instructions.
11. The sale of the Jumbo cash and carry business in 1998 caused a severe breakdown in relations between Mr Hathurani on the one hand and the other three businessmen on

the other. Mr Hathurani became aggressive and threatening and refused to discuss the expatriated funds with them.

12. Then in 2004 the relationship between Mr Hathurani and Mr Jassat also broke down, after Mr Hathurani began to demand repayment of monies he said were due to him. Shortly afterwards Mr Jassat gave instructions to the Jersey nominees to transfer the Jersey companies to a Jersey trust called the Richmond Trust. This was a discretionary trust set up for the benefit of Mr Jassat and his family. Mr Jassat accepted that none of the businessmen were aware of the Richmond Trust. He said that he had given instructions to transfer the companies to the trust because he thought it would be safer, an explanation rejected by the Judge as not credible. The Judge considered it much more likely that they were transferred to improve Mr Jassat's position in his dispute with Mr Hathurani, but said that on any view Mr Jassat was not authorised to transfer companies held for Mr Gangat and Mr Bhawan to a trust for the benefit of his family, and this was simply a misappropriation by Mr Jassat of assets which did not belong to him.
13. In October 2008 Mr Hathurani began proceedings against Mr Jassat on the basis that his share of the monies in the Swiss bank accounts had been invested in UK real property pursuant to a partnership between them, and claiming in excess of £28m for partnership capital and profits. Those proceedings were in the end settled at the doors of the court on the basis that Mr Jassat had received no more than £7.5m of Mr Hathurani's money and would repay £8.75m by the end of January 2012.
14. For present purposes what is most significant is that in his Defence in that action Mr Jassat said that the monies which he had taken from two of the Swiss bank accounts had belonged to all four South African businessmen; and in his witness statement for the trial of that action, he said in particular that one property, a shopping centre at New Ash Green, was purchased with monies belonging to all four of them and hence was owned as to 60% by Messrs Seetha, Gangat and Bhawan. That was supported by a statement of truth, but was flatly contradictory to his evidence before the Judge in the present action, where he maintained that the New Ash Green property was purchased with Mr Hathurani's money alone. The Judge was unsurprisingly very unimpressed with this, and rejected Mr Jassat's evidence that the New Ash Green property was purchased with Mr Hathurani's money alone rather than with a mortgage and money from an account belonging to all four of them.
15. Mr Jassat's reaction to being sued by Mr Hathurani was to invite Mr Seetha and Mr Gangat to London. The Judge rejected Mr Jassat's explanation that this was to see if the trustees would allow them to take a property referred to as the Eastover property, and found that it was much more probable that the real reason was that he was hoping to reach an agreement with Mr Seetha and Mr Gangat so that they did not join in Mr Hathurani's proceedings against him.
16. There were a number of meetings. At one of them on 7 January 2009 a document referred to in the proceedings as "**the Richmond Lodge Document**" was signed. It was on the letterhead of Richmond Lodge Management, a firm in which Mr Jassat and his wife were partners and which acted as property management agents, collecting rent and the like. It continued:

“ALTON & FARNHAM LTD

37-43a Eastover, Bridgewater, Somerset Acquired 12/11/1991

As at 31 MARCH 2008

Financed By:

Capital Account

Initial capital introduced	483,927	
Retained Profit	<u>169,082</u>	
	653,009	<u>653,009</u>
Capital repayments		<u>653,009</u>

Estimated rental per month Gross £2,500.00 (Less 22% Tax and other expenses)

- 1) Rent paid every Quartly (3 monthly)
- 2) COH £169,082 (rent) Cash Alton & farnham
£139,000 (mosque Property) Cash
- 3) Cash \$5,103,500
- 4) Foreign Account \$12MIL (1.2Mil x 2 = 2.4mil) Cash
- 5) Jumbo Syndicate

NEW ASH GREEN Properties (10% share x 2)

Above Total investments to be split in half

50% ANWAR & 50% SURU

Above portfolio is held by Mr Y A Jassat

[signature]

Y A Jassat

[signature]

Miss S Jassat”

17. This is a highly significant document, and the Judge dealt with it at some length and with considerable care. His findings were as follows. The document was prepared and typed up by Mr Jassat. Two identical copies were produced. Each was signed by Mr Jassat and his daughter. One was for Mr Gangat and one was for Mr Jassat. At the same time Mr Jassat and his daughter signed two copies of a similar document for Mr Seetha.

18. Mr Jassat's evidence was that he was responsible only for the entries down to the figure for capital repayments of £653,009, the remainder of the document being added at the request of Mr Seetha and Mr Gangat for use in the SARS inquiry and irrelevant to the position between them and Mr Jassat. His case was that the only property he acquired for Mr Gangat and Mr Bhawan was the Eastover property, and that they agreed with him in 2009 that he should pay them £653,009 in respect of their interest in the Eastover property which would be treated as an interest free loan (which he accepted had not been repaid).
19. The Judge rejected this evidence. He expressed his conclusion as follows (Jmt at [96]):

“I find that the two copies of the Richmond Lodge Document were intended to be a statement of account of the assets under the Defendant's control which were derived from the Claimants' monies. The two copies of Mr Seetha's Richmond Lodge Document also appear to be intended to be a statement of account of the assets under the Defendant's control which were derived from Mr Seetha's monies.”
20. The Judge also found (Jmt at [99]) that Mr Jassat reassured Mr Gangat and Mr Bhawan that he was keeping their money safe and that he would account to them for the assets recorded as under his control in the Richmond Lodge Document, and that on that basis they did not join the Hathurani proceedings or bring claims themselves against Mr Jassat, which was what Mr Jassat was seeking to achieve.
21. The Judge went on to deal with the way in which the properties were dealt with in the Grant Thornton report, and certain subsequent exchanges between the parties, both of which he found to be inconsistent with Mr Jassat's case that his only obligation to Mr Gangat and Mr Bhawan after 2009 was to pay them £653,009.

The Judgment

22. I can now summarise the Judgment. After an introduction (at [3] to [11]), the Judge briefly discussed his approach to the evidence, noting that this was a case where each side accused the other of giving dishonest evidence (at [12] to [17]), and that the documentation was not complete. I will come back to what he said about this below. He then made some comments on the witnesses (at [18] to [22]). Again I will come back below to what he said in this section, but it can be noted now that he found all the protagonists, that is Mr Gangat and Mr Bhawan on the one hand and Mr Jassat on the other, to have lied. As explained in more detail below, he rejected as not credible Mr Gangat's explanation as to why documentation relating to the SARS inquiry had not been disclosed, and took the same view of Mr Bhawan's explanation. His view of Mr Jassat as a witness was even less favourable, describing him as “by far, the least satisfactory witness” (Jmt at [21]), and finding that his explanation in this action of why he had given an account in the Hathurani proceedings of the beneficial ownership of the New Ash Green property which on his account he knew to be untrue did not stand up to scrutiny (ibid).
23. He followed this with a short section on the available documentation, referring in particular to the Grant Thornton report (at [23] to [26]), before turning to the facts. He set out his findings, which I have already summarised above, at [27] to [114], and

this forms by far the bulk of the Judgment. He then turned to the claim for an account (at [115] to [119]). The primary basis on which Mr Gangat and Mr Bhawan had advanced their claim to an account was that Mr Jassat was an express trustee for them. The Judge rejected that at [115] on the basis that the evidence suggested that their monies were held in offshore structures held initially for them and then transferred to the Richmond Trust. They had been unable to identify any property vested in Mr Jassat as trustee, nor did it seem that there was any intention that there should be. In those circumstances there was no express trust as there was no complete transfer of trust property to Mr Jassat as trustee, which is a requirement of an express trust.

24. But Mr Gangat and Mr Bhawan also had a claim to an account on the alternative basis that there was a relationship of trust and confidence between Mr Jassat and them such as to give rise to him owing them fiduciary duties. Having cited the decision of HHJ Hodge QC in *Al-Dowaisan v Al-Salam* [2019] EWHC 301 (Ch), he succinctly summarised the relevant principle as follows:

“118. In other words, where A has control of property belonging to B in circumstances where viewed objectively B is entitled to expect A to administer that property for the benefit of B, then equity enforces A’s obligation of due administration by requiring A to account for his dealings with B’s property.

119. In many cases, the property will be vested in A, but that is not a requirement. It is sufficient that A has control over it, that being the “*key component*”.”

25. He then expressed his conclusion (at [120] to [124]). It is simplest to cite his main conclusion at [120] as follows:

“120. The Defendant has had control of the Claimants’ monies and the investments made from those monies. The Claimants expected the Defendant to administer those assets for their benefit, and were entitled to do so. The Defendant accepted a power of attorney over the Claimants’ Camelot account and thereby agreed to be their agent in managing that account (see paragraph 45 above). The Defendant also agreed to invest their monies on behalf of the Claimants and controlled those investments by giving instructions to the offshore entities which held them (see paragraph 56 to 58 above). It is no surprise, therefore, that a court of equity will make the Defendant account for his dealings with those assets.”

At [121] he rejected a submission on behalf of Mr Jassat that he was only liable to account to Mr Hathurani, if anybody. He found that Mr Jassat was aware that the funds credited to Mr Hathurani’s account represented funds belonging to the businessmen together such that he was accountable to them all, and that once they had been apportioned and paid into individual accounts, he was bound to deal with them on the instructions of Mr Gangat and Mr Bhawan alone.

26. Then after reference to the transfer to the Richmond Trust being a breach of fiduciary duty for which Mr Jassat would be personally liable if the assets had been lost to

Mr Gangat and Mr Bhawan, he concluded at [123] that he would order an account, and would hear submissions on the form of order, but:

“the starting point for any accounts and inquiries should be the Richmond Lodge document which is in my judgment an acknowledgment by the Defendant of the state of the account as between the Claimants and the Defendant which the Claimants accepted and agreed. It is effectively an account stated as at that date.”

27. After a further hearing to determine consequential matters, he made an Order dated 25 October 2021 in which, so far as relevant, he gave judgment for the Claimants for the taking of an account (paragraph 1), ordered Mr Jassat to account for the items listed in the Richmond Lodge Document (paragraph 2), and ordered Mr Jassat to pay the Claimants the sum found due on the taking of that account (paragraph 3). The account ordered by paragraph 2 was in these terms:

“The Defendant shall account to the Claimants for the assets and monies listed in the Richmond Lodge Document as due to the Claimants and described below, together with all income and profits and proceeds of sale received or which should have been received from the same, and for the current value of the fund derived from those assets which should now be held for the Claimants (including for the avoidance of doubt, any increase in value or interest which would or should have accrued to the same):

1. Eastover 37-43A Eastover Bridgewater, Somerset.
2. Rent and retained profits referred to in the Richmond Lodge document under entry 1 and 2.
3. Cash in the sum of £139,000 under entry 2 in the Richmond Lodge document concerning the Mosque property.
4. \$5,103,500 referred to under entry 3 of the Richmond Lodge document.
5. \$2.4 million of the \$12 million in the foreign account under entry 4 of the Richmond Lodge document.
6. The Claimants’ 20% interest in New Ash Green referred to under entry 5 of the Richmond Lodge document under the heading Jumbo Syndicate.”

28. He refused Mr Jassat permission to appeal, but permission was granted by Arnold LJ on 15 December 2021.

Grounds of Appeal

29. Mr Peters advanced three Grounds of Appeal. In summary they were as follows:
- (1) The Judge failed to pay proper regard to his conclusion that the Claimants were guilty of dishonestly suppressing relevant documentation.

- (2) The Judge erred in ordering an account against Mr Jassat on the basis that he owed the Claimants a fiduciary duty, which required the Claimants to establish that property of theirs had been placed under his control and that he received them in an accountable capacity.
- (3) The Judge erred in determining that the Richmond Lodge Document represented an accurate statement of account between the parties as of January 2009, as this was not an issue that was properly before him.

Preliminary remarks

30. Before coming to the detail of these grounds, it is helpful to step back and look at the case in the round. This was one of those cases where none of the parties presented an attractive picture to the Court. All three of them, Mr Gangat, Mr Bhawan and Mr Jassat, had acted dishonestly, not only in relation to the underlying events, but also in their conduct of litigation. Mr Gangat and Mr Bhawan had by their own account participated in a conspiracy to cheat the South African revenue and evade South African exchange controls. In the litigation the Judge found them to have deliberately suppressed documentation that they were bound to disclose, and rejected as not credible their explanation of these matters. Mr Jassat on the Judge's findings simply misappropriated valuable assets held for the Claimants by transferring them to the Richmond Trust, a trust for his own family. He gave completely different accounts of the ownership of the New Ash Green property in his witness statement in the Hathurani proceedings and his evidence in this action, and as the Judge said was either lying to him or had lied in that witness statement. None of these findings is, or realistically could be, challenged on this appeal.
31. Such cases, as I have remarked before, pose particular difficulties for a trial judge. Where facts are disputed, it is often not easy for a judge to resolve where the truth lies even where all parties are honestly trying to do their best to comply with their duties to the Court and the documentary record is complete; but where all parties are dishonest and deliberately give perjured evidence, and documents are deliberately withheld, it makes the task of judges much more difficult, as there are few secure footholds for them as they pick their way through the swamp of allegations.
32. I do not think it can be suggested that the Judge was not alive to the difficulties. Having commented at [12] that both sides accused the other of giving false evidence, he cited at [13] the well-known comments of Robert Goff LJ in *The Ocean Frost* [1985] 1 Ll R 1 at 57 on the difficulties of assessing whether a witness is telling the truth and the assistance to be obtained from objective facts and documents and the overall probabilities. At [15] he noted that the events dated back to the 1980s and 1990s and that witnesses' memory of events so long ago cannot be expected to be reliable on matters of detail. He continued at [16]:

“Ordinarily the court would be assisted by contemporaneous documentation. In this case, there are some contemporary documents available but it is a feature of this case that the South African businessmen were seeking to conceal their connection with the expatriated funds from the South African authorities. There was therefore an aversion to creating or keeping documentary records which might now be helpful to a court. There are subsequent events which may shed some light on the issues, and some of

those events have generated documents. On any view the documentation which is available is not complete, and there is always a danger when the documentation available is incomplete that the picture that is disclosed is misleading. This is a particular danger where it is said that there has been deliberate suppression of relevant documents by one or other side in a case.”

At [17] he said that notwithstanding these challenges:

“I do my best to assess the rival versions of the truth against an objective assessment of such reliable facts as there are, and the overall probabilities.”

At [23ff] he identified such documents as *were* in evidence, and found some assistance in the Grant Thornton report, the documents disclosed in and generated by the Hathurani proceedings, and e-mails and other correspondence passing between the parties.

33. Leaving aside for the moment the particular points argued by Mr Peters in support of his Grounds of Appeal, this seems to me an entirely appropriate approach by the Judge given the difficulties caused by the parties in the present case. Where oral evidence is unreliable at best, the task of the judge is to look for evidence on which reliance can be placed in the circumstances of the particular case. Previous statements by or on behalf of the parties, especially if they contain admissions against interest (as in effect the Grant Thornton report did), or are inconsistent with their oral evidence, can be very helpful in determining where the truth lies.
34. There is one other point that can usefully be made by way of preliminary, which is that in my judgment there is really only one question in this appeal. That is whether the Judge was entitled in all the circumstances of the case to make the finding he did at Jmt [96], that is that the Richmond Lodge Document was “a statement of account of the assets under the Defendant’s control which were derived from the Claimants’ monies”. If he was, then his order that Mr Jassat account for those assets seems to me entirely justified and indeed a matter of course. I will say now that I consider he was fully entitled to make this finding, and that is in effect why I agreed that the appeal should be dismissed.
35. With that introduction, I can turn to the three Grounds of Appeal.

Ground 1: document suppression

36. The facts relied on by Mr Peters in support of this ground can be shortly stated. Mr Gangat and Mr Bhawan had been ordered to disclose, among other things, all documents relating to the SARS inquiry, but apart from their respective settlement agreements and an e-mail, claimed that they had no such documents. When Mr Khan was opening the case on Day 2 he sought to derive the amount expatriated from the settlement agreements which showed the amount of tax that each of them had agreed to pay. But it became apparent that the basis on which the tax had been calculated was not in evidence. Overnight Mr Gangat produced a letter from SARS which, most conveniently, did explain the basis of calculation. Mr Gangat, when cross-examined, maintained that he had found the letter in a box of old cheque books and that it was the only document relating to the SARS inquiry that had been found.

37. The Judge disbelieved Mr Gangat, as follows (at [19]):

“He was unable to explain satisfactorily why it had suddenly occurred to him to search this particular box overnight, nor why it had not occurred to him to do so when he had been ordered by Deputy Master Nurse to search for documents in 2020. This was not credible evidence and I reject it. The SARS inquiry was a major inquiry which lasted several years and (as Mr Bhawan readily agreed) generated an enormous amount of documentation. The settlement agreements can be avoided by SARS if the Claimants have failed to make full disclosure to SARS. The suggestion that the Claimants have kept almost no documents at all relating to the inquiry and what they have communicated to SARS is not credible. Nor is it credible that only one further document beyond those disclosed was kept which Mr Gangat conveniently found overnight and which conveniently addressed the point on which their counsel had got into difficulty earlier that day.”

38. Mr Bhawan was also asked why there had been no wider disclosure of the SARS inquiry documentation. The Judge’s assessment of him was that he became very uncomfortable when cross-examined on this, and he did not find his evidence on this issue credible.

39. On these facts, Mr Peters’ careful argument proceeded by the following steps. First he submitted that the Judge had found that Mr Gangat and Mr Bhawan had dishonestly suppressed documents. That I accept: the Judgment seems tolerably clear on this point, but, in addition, in the course of the consequential hearing on 25 October 2021 the Judge himself referred to there having been a finding that they had suppressed documents.

40. Second, he submitted that the documents that had been suppressed were potentially significant. That I am willing to accept as well. It is of course impossible to know what they might have consisted of or contained, but I accept that if a litigant has deliberately failed to disclose documents it is a reasonable inference that they would have been damaging to his case. In the present case Mr Peters speculated that Mr Gangat and Mr Bhawan might not have included the assets which they now asserted Mr Jassat was holding for them when making disclosure of their assets to SARS (which was a condition of their settlements with SARS). If so, that might have been useful material for Mr Peters to have when cross-examining them.

41. So far, so good. But it is Mr Peters’ next step which I do not accept. His submission was that the Judge had not dealt adequately with the consequences of document suppression in the Judgment. He did not take exception to what the Judge actually said in the last two sentences of [16], namely that there is always a danger when documentation is incomplete that the picture is misleading, and that this is a particular danger when there has been deliberate suppression (see paragraph 32 above), but said that this was not enough. There should in his submission have been a separate section in his judgment saying what the missing documents were, why they mattered and what the consequences were. And he said that there was a second error, which is that one does not know exactly what the Judge thought the relevance of the suppressed documents was, because the Judgment does not analyse that at all.

42. I have already indicated that I do not accept this submission. Modern judgments are quite long enough as it is, and I think we should be very wary in this Court of being too prescriptive as to how judges write their judgments. This is particularly the case when it comes to a trial judge's analysis of the evidence. We would be doing no-one any favours (neither judges, nor litigants, nor others who have to read judgments) if we started laying down rules requiring judges to spell out in detail why they have or have not accepted particular pieces of evidence, let alone what the significance might be of evidence that, for whatever reason, was *not* before the Court.
43. There is high authority that a judge's reasons for his or her judgment should in general be read on the assumption, unless they have demonstrated the contrary, that they knew how they should perform their functions (*Pigłowska v Pigłowski* [1999] 1 WLR 1360 at 1372G per Lord Hoffmann); and that when it comes to findings of fact in particular, an appellate court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into consideration (*Thomas v Thomas* [1947] AC 484 at 492 per Lord Simonds, *Henderson v Foxworth Investments Ltd* [2014] UKSC 41 at [48] per Lord Reed JSC). In the present case the Judge had correctly noted in his Judgment at [16] that where documents had been suppressed there was a particular danger of the documents that were before the Court giving a misleading picture, and I do not think we have any basis for supposing that he had forgotten, or ignored, this self-direction when he came to assess such evidence as there was. I certainly do not think we should criticise the Judge for not overburdening the Judgment with lengthy analysis of what missing documents, which by definition he had not seen, might or might not have contained. On the contrary, I would commend the Judge for the laudably concise way in which he dealt with the issues in his Judgment. The trial took 7 days, the facts, extending over many years, were heavily disputed, the witnesses were unhelpful at best and dishonest at worst, and the documentary record was nothing like as full as it should have been. There is always a danger in such a case of over-elaborate analysis and discussion of the difficulties. But the Judge successfully homed in on the key issues and disposed of the case in 124 paragraphs over 37 pages.
44. Despite Ground 1 being worded so as to contend that the Judge had no option but to conclude that the Claimants' conduct had deprived him of the ability fairly to determine the issues and that their claim ought to be dismissed, Mr Peters did not press this in oral submissions. Quite apart from the fact that it would have been difficult for him to do so as such a course was never suggested in his closing submissions, Mr Peters expressly accepted that where a judge has found documents to be suppressed there may be a number of options open to him. In some cases a judge might draw adverse inferences as to what missing documents might have contained; in some he might hold that the burden of proof on a particular issue was not discharged; in some he might go so far as to hold that the whole trial process was so corrupted that a fair trial was indeed impossible and the action should be dismissed: see the discussion by Calver J in *Active Media Services Inc v Burmester, Duncker & Joly GmbH & Co KG* [2021] EWHC 232 (Comm) at [294]-[311], and that in *Hollander on Documentary Evidence* (14th edn) at §11-14 to §11-18. But I do not think there can be any hard and fast rules. The impact of document suppression in any particular case must depend on what the issues are, and what the other evidence is. If the Court can make secure findings of fact on the basis of other evidence, even

after making due allowances for what might have been deliberately withheld, then it seems to me entirely appropriate for it to do so.

45. Here the overall issue was whether Mr Jassat was accountable to Mr Gangat and Mr Bhawan. That ultimately depended on the question succinctly identified by the Judge in the Judgment at [118], namely whether Mr Jassat had control of property belonging to them in circumstances where, viewed objectively, they were entitled to expect him to administer that property for their benefit (see paragraph 24 above). Even taking into account the fact of deliberate suppression, the Judge had ample evidence to answer that question Yes.
46. It is not necessary to detail it all, but it included the following:
 - (1) The Grant Thornton report. This was prepared by Grant Thornton for the purpose of Mr Jassat making a disclosure to HMRC. It included statements that Mr Jassat had extensive dealings with Mr Gangat; that he had been introduced to him in about 1988; that he was then made aware that the money transferred from South Africa to Geneva belonged to Messrs Hathurani, Seetha, Gangat and Bhawan (described as an associate/silent partner of Mr Gangat); that Mr Jassat was asked to manage the funds; and that Mr Jassat used Mr Gangat's moneys to purchase properties in the UK. It identified Alton & Farnham Properties as having been set up for the benefit of Mr Gangat (that is for Mr Gangat and Mr Bhawan) and the monies used to purchase its properties as having come from him. It also identified another company, Piperton Finance Ltd, as having been set up for the benefit of Messrs Hathurani, Gangat and Seetha, and the monies used to purchase its properties as having been derived from them. That included the New Ash Green property.
 - (2) Mr Jassat's third witness statement in the Hathurani proceedings. This included statements that when (in about 1988) Mr Gangat and Mr Seetha came to London and met him, they explained that the monies from South Africa were held 40% for Mr Seetha and 20% for Mr Gangat, his 20% share in reality being divided equally between him and Mr Bhawan; that Mr Gangat and Mr Seetha travelled to Geneva with him and had a detailed conversation with a bank representative as to how the money coming from South Africa was to be divided; that a number of new accounts were opened to hold their shares of the money; and that "Mr Seetha and Mr Gangat arranged for me to have control over all of these new accounts. The basis on which they did so was that Mr Hathurani ... trusted me and they were prepared to do the same." It also confirmed that Mr Jassat had control over both the accounts into which the money from South Africa flowed, belonging to the businessmen jointly, and individual accounts for the benefit of each of them; that "Camelot" was a reference to Mr Gangat; and that the New Ash Green property was funded by borrowed monies which belonged not just to Mr Hathurani but also to Mr Seetha and Mr Gangat.
 - (3) An e-mail exchange in 2012 in which Mr Gangat asked when properties could be transferred into their names, to which Mr Jassat's response was to attempt to set up a meeting to take this forward.

- (4) An e-mail exchange in 2015 in which a Mr Brassey of Grant Thornton told Mr Gangat that he had met Mr Jassat recently and “he has advised that he owes an amount of money to you along similar lines to the monies claimed and repaid to Mr Hathurani.”
- (5) A further e-mail exchange in 2015 in which Mr Jassat told Mr Gangat that he had no intention of stealing any of “yours, Suru or Steves funds” (the reference to Suru being to Mr Bhawan and to Steve being to Mr Seetha).
- (6) A letter from Grant Thornton to HMRC in 2015 in which they said that the settlement with Mr Hathurani only accounted for the monies owed to him and that “a substantial amount, yet to be quantified, is owed to the other individuals in South Africa”.

The Judge of course also had the benefit of seeing Mr Jassat being extensively cross-examined on these and other matters, and, as already referred to, regarded him as a very unsatisfactory witness.

47. This was not therefore a case where the claim was simply dependent on the Judge accepting the witness evidence of Mr Gangat and Mr Bhawan. Even discounting their evidence, the Judge had enough other material, much of it emanating from Mr Jassat himself, to reach the conclusion he did. In those circumstances I see no flaw in the Judge’s approach which was, in summary, to recognise that the Claimants had dishonestly suppressed documents, to recognise the dangers that that posed, but to base his conclusions on other evidence, and in particular documentary material, which he regarded as a reliable indication of where the truth lay. In my judgment he was entitled to do that, and this ground of appeal is not made out.

Ground 2

48. Ground 2 is that the Judge was wrong to find Mr Jassat accountable on the basis of the Claimants’ alternative claim for a breach of fiduciary duty, because that claim required the Claimants to establish that property of theirs had been placed under the control of Mr Jassat, but the Judge failed to identify the particular property which was placed under his control.
49. I have found this ground difficult to follow. Mr Peters did not criticise the Judge’s formulation of the relevant principle of law (Jmt at [118] – see paragraph 24 above). What that requires is a finding that A (Mr Jassat) has control of assets belonging to B (Mr Gangat and Mr Bhawan) in circumstances where viewed objectively B is entitled to expect A to administer that property for the benefit of B. If so, then equity enforces A’s obligation of due administration by requiring A to account for B’s property. I may add that, as this formulation illustrates, it is not necessary as a matter of law for B to prove that A has acted in breach of duty, because equity will require a faithful steward to give an account to B of what he has done with B’s property as much as a crooked one; but in fact the Judge here found (and this is not challenged) that Mr Jassat’s transfer of the relevant companies to the Richmond Trust was a misappropriation by him, which if he was a fiduciary at all was a clear case of breach of duty.

50. The key question therefore was whether the Judge could properly find that Mr Jassat had control of assets held for the benefit of Mr Gangat and Mr Bhawan. I have already referred to some of the extensive evidence indicating that he did, including his own witness statement in the Hathurani proceedings to the effect that Mr Seetha and Mr Gangat arranged for him to have control over new accounts opened for them on the basis that they were prepared to trust him (paragraph 46(2) above).

51. Moreover Mr Jassat never denied that he had arranged for the Eastover property to be acquired, and that it had been acquired for Mr Gangat and Mr Bhawan. His own pleaded case was that Mr Gangat had told him he wanted to purchase UK real property; that he had therefore arranged for Alton & Farnham Ltd to acquire the Eastover property in 1991; that it was to be treated as a property investment for Mr Gangat; that he had therefore arranged for the shareholders to execute declarations of trust for Mr Gangat; and that

“Accordingly from around the date of purchase of Eastover (and in accordance with the agreement reached between Mr Jassat and the Claimants), Mr Jassat proceeded on the basis that Eastover was, in substance, beneficially owned by the Claimants (either directly, or via their beneficial ownership of the shares in Alton & Farnham).”

(Paragraph 12 of the Amended Defence).

52. On the face of it that series of admissions by itself was sufficient to justify the Judge in holding Mr Jassat accountable to Mr Gangat and Mr Bhawan, subject to Mr Jassat’s defences. Apart from a defence of illegality which has not featured on this appeal, his substantive answers to the claim were three-fold, as succinctly identified by the Judge in his introductory section. One was that the money in the Swiss bank accounts really belonged to the Jumbo group of companies. The Judge rejected that, and there has been no appeal on that point. The second was in effect that he was only liable to account to Mr Hathurani, and that the Claimants’ claim, if they had one, lay against Mr Hathurani. Again that was rejected by the Judge, and there has been no appeal. The third was that the only property he acquired for the Claimants was the Eastover property, and that he had agreed with them in 2009 that he should pay them £653,009 in respect of their interest which was thereafter left outstanding as an interest free loan, and that was the full extent of his liability. The Judge rejected that, finding that there was no such agreement and that the Richmond Lodge Document was an acknowledgment by Mr Jassat of what he was holding in 2009 for Mr Gangat and Mr Bhawan. That included not only the Eastover property, and assets derived from it; but also \$2.4m (20% of a sum of \$12m) in cash; and 20% of the New Ash Green property.

53. If he was entitled to make that finding about the Richmond Lodge Document at all (which is the subject of Ground 3), then I have great difficulty in seeing what is wrong with his conclusion that Mr Jassat was accountable for those assets. On its face the Richmond Lodge Document was a plain acknowledgment that Mr Jassat was holding “the above portfolio”, and that the “above investments” were to be split equally between Mr Gangat and Mr Bhawan. If it meant what it said, that seems to me to be a paradigm example of a case where “A has control of property belonging to B in circumstances where viewed objectively B is entitled to expect A to administer that property for the benefit of B” (Jmt at [118]), and hence that Mr Jassat was

accountable to Mr Gangat and Mr Bhawan for that property. Mr Jassat's case of course was that it did not mean what it said, but the Judge rejected that. I will come back to whether he was entitled to do so under Ground 3, but if he was, the conclusion that Mr Jassat was accountable seems to me undoubtedly to follow.

54. What then is Mr Peters' argument to the contrary? As I understood it, it was that the foundation of a duty to account is that particular property has been placed under the control of the fiduciary, and that it was necessary for the Claimants to plead and prove what property had been so placed. Insofar as this is a point of substance, I do not see why an admission by a defendant that he holds identified property for a claimant is not enough, and that was what the Judge found the Richmond Lodge Document to have been. It was not necessary for the Judge to delve into the detail of precisely how the assets there listed had come to be acquired or held by Mr Jassat for Mr Gangat and Mr Bhawan; indeed the whole value of it as an acknowledgment of the position as at January 2009 (or March 2008) was that it was unnecessary to go back further than that.
55. Insofar as this was a pleading point, I do not accept it. Mr Peters took us through the Amended Particulars of Claim with some care, with a view to showing that the Claimants' claim was limited to two specific sums, one of \$4m and one of \$12m. But without getting into the detail, I think that is a mis-reading of the pleading. It is perhaps not as well drafted as it might have been, and the primary case advanced is that Mr Jassat was an express trustee. But it includes an alternative claim that "by reason of matters referred to above, namely ... his dealings with the Claimants, which gave rise to a relationship of trust and confidence" Mr Jassat owed them fiduciary duties (paragraph 35). The "matters referred to above" include allegations not only that the \$4m and \$12m were transferred to Mr Jassat but that "moreover" Mr Jassat provided the Claimants with the Richmond Lodge Document which contained an admission by him of the joint investment and property portfolio held by him for them (paragraph 19); that Mr Jassat purchased various properties (including the Mosque property and the New Ash Green property) with the Claimants' monies as outlined in the Richmond Lodge Document (paragraph 21); that by the Richmond Lodge Document Mr Jassat confirmed that he was holding the Claimants' joint investments and property portfolio which was to be split in half so that 50% should be held for "Anwar" (Mr Gangat) and 50% for "Suru" (Mr Bhawan) (paragraph 24); and again that the Richmond Lodge Document evidenced a joint property and investment portfolio belonging to the Claimants (paragraph 28). That seems to me to be sufficient to indicate that the Claimants were relying on the Richmond Lodge Document as an identification of a portfolio of specific property held by Mr Jassat in an accountable capacity for them in 2009, even if they could not establish quite what transfers of money had funded that portfolio.
56. Mr Peters had a point that the Claimants also alleged that the Richmond Lodge Document was not a complete account. He did however accept the following summary of what they were alleging: "You gave us that document, that was intended to be an account. It is not complete because you did not put everything on it, but what you did put on it, you admit holding for us." As a matter of pleading (and subject always to Ground 3), that seems to me to be sufficient to entitle the Judge to find that the Richmond Lodge Document was intended to be an account of what Mr Jassat was

holding for the Claimants in 2009, and to conclude that he was accountable at least for what he there admitted holding.

57. Mr Peters took us in some detail through what he said the evidence was as to the \$4m and the \$12m and said that the Judge had never made sufficient findings about these sums or what particular property had been placed under Mr Jassat's control. But for the reasons I have given, I do not think he was obliged to. The Claimants' case was not, on a fair reading of the pleading, confined to these particular sums, but included an allegation that, whatever else the position was, Mr Jassat was accountable to them among other things for the portfolio listed in the Richmond Lodge Document which he admitted holding for them, and there was undoubtedly evidence to support that case. That seems to me enough, and I would dismiss this ground of appeal.

Ground 3

58. Ground 3 is that the Judge went beyond the issues listed for trial in ordering an account on the basis of the Richmond Lodge Document.

59. Mr Peters advanced two points under this ground. The second was in effect a repeat of the points he had made under Ground 2, namely that the pleaded case was that particular monies had been placed with Mr Jassat and that what should have been ordered, if at all, was an account of what had happened to those monies, not an account which took as its starting point a statement produced years later. I have already in effect addressed this: if the Judge was entitled to find the Richmond Lodge Document to be an acknowledgment of what was held by Mr Jassat for Mr Gangat and Mr Bhawan in 2009, I see nothing wrong with ordering an account based on the properties and assets there listed. As the Judge said when refusing permission, one cannot just order an account in the abstract. The Court has to decide the nature and scope of the account to be directed, and on the basis that the Richmond Lodge Document was a statement of account as at 2008 or 2009, that seems an appropriate starting point for the account he ordered. I do not think there is anything in this point.

60. Mr Peters' other point was that this was not properly an issue for trial. By Order of Deputy Master Nurse dated 9 March 2020 the trial was directed to be a trial of liability which would address the specific issues listed in the schedule to that Order. These included the following:

“16. The circumstances in which the Richmond Lodge Document came to be produced.

...

25. Whether, as alleged by the Defendant, the only extant agreement between himself and the Claimants (or either of them) is the 2009 Loan Agreement.

...

26.2 Whether the Defendant held any particular monies (in whatever form), paid to him by (or at the direction of) the Claimants on trust for them, or either of them.

...

26.4 Whether the Defendant is, in principle, liable to account in equity to the Claimants, or either of them in respect of the monies identified in [26.2] above (and/or the traceable proceeds thereof).”

61. Mr Peters’ point was that issue 16 was only directed at the circumstances in which the Richmond Lodge Document was produced and not at whether it was an agreed statement of account, something that was in fact neither party’s case. Mr Jassat’s case was that it was not a statement of account at all, and the Claimants’ was that it was incomplete and not agreed.
62. But I do not think the issues can be regarded as so narrowly circumscribed. The circumstances in which the Richmond Lodge Document came to be produced embraced the question whether it was produced by Mr Jassat and intended to be an acknowledgment of what he was then holding; or whether everything except the initial entries was dictated by Mr Gangat for his own purposes and not intended to be of any significance between him and Mr Jassat. The Judge had to resolve that question, and did so. I think he was clearly entitled in those circumstances to conclude that it was intended and presented by Mr Jassat as an acknowledgment of what he was then holding for Mr Gangat and Mr Bhawan. Having reached that conclusion, and rejected Mr Jassat’s case that their interest was replaced by a loan (the 2009 Loan Agreement referred to in issue 25), I do not see why that could not form the basis of an identification of what assets (monies or their proceeds) Mr Jassat was accountable for under issue 26.4. In my judgment his decision (in Jmt at [96] – see paragraph 19 above) that the Richmond Lodge Document was “intended to be a statement of account of the assets under the Defendant’s control which were derived from the Claimants’ monies” was one that fell within the scope of the trial ordered by Deputy Master Nurse.
63. Mr Peters said that there was a difference between Mr Jassat’s intention that it be a statement of account, and whether it was in fact. I have to say that I do not understand that submission. If that is what Mr Jassat, the author of the document, intended it to be, that is what it was.
64. As to Mr Peters’ point that it was neither party’s case that it was an *agreed* statement of account, he accepted that he could not have objected on this ground to a finding by the Judge that it was an acknowledgment by Mr Jassat of the state of account as between the Claimants and him (that is, omitting the finding that it was agreed by them). If that is right, then the only effect of the addition of the finding that it was agreed by the Claimants was to reject their case that it was a partial statement of account and hence preclude them from seeking any wider account. That in my judgment was something that it was for the Claimants to complain about if they wished to; it was not something that Mr Jassat could object to.
65. I consider that this ground of appeal should also be dismissed.

Conclusion

66. These were the reasons why I agreed that the appeal should be dismissed.

Lord Justice Warby:

67. I agree.

Lord Justice Stuart-Smith:

68. I also agree.